

REFERENCE TITLE: **procurement services; costs; fees**

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1306

Introduced by
Senator Tibshraeny; Representative Tobin

AN ACT

**AMENDING SECTIONS 34-103 AND 34-603, ARIZONA REVISED STATUTES; RELATING TO
THE PROCUREMENT OF PROFESSIONAL SERVICES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-103, Arizona Revised Statutes, is amended to
3 read:

4 34-103. Employment of technical registrants for work on public
5 buildings and structures: direct selection: final
6 list selection: public competition

7 A. An agent shall procure professional services from a technical
8 registrant in the manner prescribed in chapter 6 of this title if either of
9 the following applies:

10 1. The contract is with a technical registrant other than an architect
11 and is for an amount of more than five hundred thousand dollars.

12 2. The contract is with an architect and is for an amount of more than
13 two hundred fifty thousand dollars.

14 B. An agent may procure professional services from a technical
15 registrant in the manner prescribed in chapter 6 of this title or as
16 prescribed in subsection D if either of the following applies:

17 1. The contract is with a technical registrant other than an architect
18 and is for an amount of five hundred thousand dollars or less.

19 2. The contract is with an architect and is for an amount of two
20 hundred fifty thousand dollars or less.

21 C. If authority is given by law to an agent to construct a building or
22 structure, or additions to or alterations of existing buildings, an agent
23 shall employ an architect or engineer, or both, as warranted by the type of
24 construction, if the agent deems the work to be of a nature that requires
25 such employment.

26 D. An agent may employ a technical registrant by direct selection, by
27 public competition pursuant to subsection G or pursuant to subsections E
28 and F if either of the following applies:

29 1. The contract is with a technical registrant other than an architect
30 and is for an amount of five hundred thousand dollars or less.

31 2. The contract is with an architect and is for an amount of two
32 hundred fifty thousand dollars or less.

33 E. The agent may elect to employ a technical registrant by encouraging
34 persons or firms engaged in the lawful practice of the profession to submit
35 annually a statement of qualifications and experience. If the agent elects
36 to employ a technical registrant by this method, the agent shall initiate an
37 appropriately qualified selection committee for each procurement, which may
38 include one or more contracts, in accordance with rules adopted by the agent.
39 The selection committee shall evaluate current statements of qualifications
40 and experience on file with the agent together with those that may be
41 submitted by other persons or firms regarding the procurement. If possible
42 and practicable, the selection committee shall conduct interviews with at
43 least three persons or firms regarding the procurement and the relative
44 methods of furnishing the required services and, if possible, shall select,
45 in order of preference and based on criteria established and published by the

1 selection committee, a separate final list for each contract being procured
2 of at least three of the persons or firms deemed to be the most qualified to
3 provide the services required. The selection committee shall base the
4 selection of each final list and the order of preference on each final list
5 on demonstrated competence and qualifications only. The agent and the
6 selection committee shall not request or consider fees, price, man-hours or
7 any other cost information at any point in the selection process under this
8 subsection, including the selection of the persons or firms to be
9 interviewed, the selection of the persons and firms to be on a final list, in
10 determining the order of preference of persons and firms on a final list or
11 for any other purpose in the selection process. NOTWITHSTANDING THIS
12 SUBSECTION AND SUBSECTION F, A CITY, TOWN OR COUNTY MAY REQUEST A TECHNICAL
13 REGISTRANT TO PROVIDE AN ESTIMATE OF FEES, PRICE, MAN-HOURS OR ANY OTHER COST
14 INFORMATION. IF THE GOVERNING BODY OF THE CITY, TOWN OR COUNTY REQUESTS THIS
15 INFORMATION, THE INFORMATION PROVIDED IS CONSIDERED PROPRIETARY INFORMATION
16 AND SHALL NOT BE MADE PUBLIC. THE ESTIMATE OF FEES, PRICE, MAN-HOURS OR ANY
17 OTHER COST INFORMATION MAY BE ONE OF THE CRITERIA FOR SELECTION BUT MAY NOT
18 ACCOUNT FOR MORE THAN TEN PER CENT OF THE TOTAL CRITERIA.

19 F. After a final list is selected for each contract included in the
20 procurement, the agent shall enter into separate negotiations for a contract
21 with the highest qualified person or firm on the final list for the contract
22 determined under subsection E for the professional services. The negotiations
23 shall include consideration of compensation and other contract terms that the
24 agent determines to be fair and reasonable to the agent. In making this
25 determination, the agent shall take into account the estimated value, the
26 scope, the complexity and the nature of the professional services to be
27 rendered. If the agent is not able to negotiate a satisfactory contract with
28 the highest qualified person or firm on the final list for the contract at a
29 price and on other contract terms the agent determines to be fair and
30 reasonable, the agent shall formally terminate negotiations with that person
31 or firm. The agent may enter into negotiations with the next most qualified
32 person or firm on the final list for the contract in sequence until an
33 agreement is reached or a determination is made to reject all persons or
34 firms on the final list for the contract.

35 G. If competitive designs are solicited, the agent shall publish
36 notice of the competition at least thirty days before the date set for
37 closing the competition. The notice shall include the following:

- 38 1. The project title and description.
- 39 2. The design and construction budget.
- 40 3. The competitive process and criteria to be used to select the
41 winning offeror.
- 42 4. The amount of the stipend to be paid to the unsuccessful offerors.
- 43 5. The offerors' response date.

1 6. The person to contact to obtain additional information regarding
2 the competition.

3 7. Any other requirements established by the agent as appropriate.

4 Sec. 2. Section 34-603, Arizona Revised Statutes, is amended to read:

5 34-603. Procurement of professional services and
6 construction-manager-at-risk, design-build and
7 job-order-contracting construction services;
8 definition

9 A. Except for services an agent procures pursuant to section 34-103 or
10 34-604, an agent shall procure the following services pursuant to this
11 section:

- 12 1. Architect services.
- 13 2. Construction-manager-at-risk construction services.
- 14 3. Design-build construction services.
- 15 4. Engineer services.
- 16 5. Job-order-contracting construction services.
- 17 6. Landscape architect services.
- 18 7. Assayer services.
- 19 8. Geologist services.
- 20 9. Land surveying services.

21 B. An agent shall provide notice of each procurement of professional
22 services or construction services specified in this section and shall award
23 contracts on the basis of demonstrated competence and qualifications for the
24 type of professional services or construction services pursuant to the
25 procedures prescribed in this section.

26 C. In the procurement of professional services or construction
27 services pursuant to this section:

28 1. An agent shall issue a request for qualifications for each contract
29 and publish notice of the request for qualifications. This notice shall be
30 published by advertising in a newspaper of general circulation in the county
31 in which the agent is located for two consecutive publications if it is a
32 weekly newspaper or for two publications that are at least six but no more
33 than ten days apart if it is a daily newspaper. The request for
34 qualifications shall:

35 (a) Include the number of persons or firms to be included on the final
36 list. In a request for qualifications for a horizontal construction project,
37 at least three but not more than five persons or firms shall be on the final
38 list. In all other requests for qualifications, three persons or firms shall
39 be on the final list.

40 (b) State the criteria to be used by the selection committee to select
41 the person or firm to perform the professional services or the construction
42 services. The request for qualifications shall also state in a manner
43 determined by the agent the relative weight of the selection criteria and, if
44 required under paragraph 7, subdivision (b) of this subsection, that one of

1 the criteria will be the person's or firm's subcontractor selection plan or
2 procedures to implement the agent's subcontractor selection plan.

3 (c) If the agent will hold interviews as part of the selection
4 process, state that interviews shall be held with at least three and no more
5 than five persons or firms, except that if multiple contracts are being
6 procured under a single request for qualifications solicitation under this
7 subsection or a single request for qualifications and request for proposals
8 solicitation under this subsection and subsection F of this section, the
9 number to be interviewed shall be at least three and not more than the number
10 of contracts plus two.

11 2. An agent shall initiate an appropriately qualified selection
12 committee for each request for qualifications. If the agent is procuring
13 professional services, the agent shall determine the number and
14 qualifications of the selection committee members. A selection committee for
15 the procurement of construction services shall not have more than seven
16 members, except that, if the contract involves the agent and additional
17 governmental or private participants, the number of members of the selection
18 committee shall be increased by one for each additional participant, except
19 that the maximum number of members of the selection committee is nine. The
20 selection committee for construction services shall include at least one
21 person who is a senior management employee of a licensed contractor and one
22 person who is an architect or an engineer who is registered pursuant to
23 section 32-121. These members may be employees of the agent or outside
24 consultants. Outside contractors, architects and engineers serving on a
25 selection committee shall not receive compensation from the agent for
26 performing this service, but the agent may elect to reimburse outside
27 contractors, architects and engineers for travel, lodging and other expenses
28 incurred in connection with service on a selection committee. A person who
29 is a member of a selection committee shall not be a contractor under a
30 contract awarded under the procurement or provide construction, construction
31 services, materials or services under the contract. The selection committee
32 shall:

33 (a) Evaluate the statements of qualifications and performance data
34 that are submitted in response to the agent's request for qualifications.

35 (b) If determined by the agent and included by the agent in the
36 request for qualifications, conduct interviews with the number of persons or
37 firms to be interviewed as stated in the request for qualifications regarding
38 the professional services or construction services and the relative methods
39 of approach for furnishing the required professional services or construction
40 services.

41 (c) After any interviews, in order of preference, based on the
42 criteria and the weighting of criteria included in the request for
43 qualifications, select a final list for each contract of persons or firms the
44 selection committee deems to be the most qualified to provide the
45 professional services or construction services and, in the case of a contract

1 that will be negotiated under subsection E of this section, rank the persons
2 or firms on the final list in order of preference. The selection committee
3 shall base the selection of the final list and the order of preference on
4 demonstrated competence and qualifications only. If the request for
5 qualifications solicited multiple contracts, the selection committee shall
6 select a separate final list for each contract, except that if multiple
7 contracts are being procured and if the request for qualifications specified
8 that all of the multiple contracts will be awarded to a single contractor,
9 the selection committee may select a single final list for all of the
10 multiple contracts. The number of persons or firms on the final list shall
11 be the number of persons or firms specified in the request for
12 qualifications, except that:

13 (i) If a smaller number of responsive and responsible persons or firms
14 respond to the solicitation, the agent may elect to have the selection
15 committee proceed with the selection process, including interviews and the
16 final list, with the remaining persons or firms if at least two persons or
17 firms remain or the agent may readvertise pursuant to this subsection as the
18 agent deems necessary or appropriate.

19 (ii) If only one responsive and responsible person or firm responds to
20 a solicitation for a contract or multiple contracts to be negotiated pursuant
21 to subsection E of this section, the agent may elect to proceed with only one
22 person or firm in the selection process and may award the contract or
23 contracts to a single person or firm if the agent determines in writing that
24 the fee negotiated pursuant to subsection E of this section is fair and
25 reasonable and that either other prospective persons or firms had reasonable
26 opportunity to respond or there is not adequate time for a resolicitation.

27 (iii) If a person or firm on the final list withdraws or is removed
28 from the selection process and the selection committee determines that it is
29 in the best interest of the agent, the selection committee may replace that
30 person or firm with another person or firm that submitted qualifications and
31 that is selected by the selection committee as the next most qualified.

32 (d) Base the selection of the final list and order of preference on
33 the final list on demonstrated competence and qualifications only.

34 3. Except for construction-manager-at-risk construction services for
35 horizontal construction and design-build construction services for horizontal
36 construction, an agent may procure multiple contracts for professional
37 services, construction-manager-at-risk construction services, design-build
38 construction services or job-order-contracting construction services under a
39 single request for qualifications solicitation under this subsection or, for
40 job-order-contracting construction services or design-build construction
41 services, under a single request for qualifications and request for proposals
42 solicitation under this subsection and subsection F of this section. If an
43 agent does this:

(a) The advertisement and the request for qualifications shall state that multiple contracts may or will be awarded, shall state the number of contracts that may or will be awarded and shall describe the services to be performed under each contract.

(b) There shall be a single selection process for all of the multiple contracts, except that for each contract there shall be a separate final list and a separate negotiation under subsection E of this section or a separate request for proposals competition under subsection F of this section. However, if the request for qualifications specifies that all of the multiple contracts will be awarded to a single contractor, there may be a single final list and a single negotiation for all of the multiple contracts under subsection E of this section or a single request for proposals competition under subsection F of this section.

(c) The agent may award all of the multiple contracts to one contractor or may award the multiple contracts to multiple contractors.

4. For professional services, an agent may procure multiple contracts using a single request for qualifications solicitation under this subsection, except that professional services that are part of design-build construction services may not be procured under this paragraph. Each of the multiple contracts for professional services must have a term not exceeding five years and may continue in effect after the five year term for professional services on projects commenced within the five year term.

5. An agent may procure multiple contracts for job-order-contracting construction services using a single request for qualifications solicitation under this subsection or using a single request for qualifications and request for proposals solicitation under this subsection and subsection F of this section.

6. Except for horizontal construction, an agent may procure multiple contracts for construction-manager-at-risk construction services or for design-build construction services using a single request for qualifications solicitation under this subsection or for design-build construction services using a single request for qualifications and request for proposals solicitation under this subsection and subsection F of this section but in either case only for a specific single project. Portions of the specific single project shall be allocated to separate contracts.

7. For construction-manager-at-risk construction services, design-build construction services and job-order-contracting construction services if the contract will be negotiated under subsection E of this section or for job-order-contracting construction services if the contract will be awarded pursuant to subsection F of this section:

(a) The person or firm selected to perform the construction services must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. A qualifications and price selection may be a single step selection based on a combination of qualifications and price or a two step

1 selection. In a two step selection, the first step shall be based on
2 qualifications alone and the second step may be based on a combination of
3 qualifications and price or on price alone.

4 (b) The agent shall include in the request for qualifications either:

5 (i) A requirement that each person or firm submit a proposed
6 subcontractor selection plan, a requirement that the proposed subcontractor
7 selection plan must select subcontractors based on qualifications alone or on
8 a combination of qualifications and price and shall not select subcontractors
9 based on price alone and, as a selection criteria under the request for
10 qualifications, an evaluation of each person's or firm's proposed
11 subcontractor selection plan.

12 (ii) A subcontractor selection plan adopted by the agent that will
13 apply to the person or firm that is selected to perform the construction
14 services and that requires subcontractors to be selected based on
15 qualifications alone or on a combination of qualifications and price and not
16 based on price alone, a requirement that each person or firm must submit a
17 description of the procedures it proposes to use to carry out the agent's
18 subcontractor selection plan and, as a selection criteria under the request
19 for qualifications, an evaluation of each person's or firm's proposed
20 procedures to carry out the agent's subcontractor selection plan.

21 (c) The agent shall include in its contract with the selected person
22 or firm either:

23 (i) If the agent included its subcontractor selection plan in the
24 request for qualifications, the agent's subcontractor selection plan and the
25 procedures proposed by the selected person or firm in submitting its
26 qualifications with those modifications to the procedures as the agent and
27 the selected person or firm agree.

28 (ii) If the agent did not include its subcontractor selection plan in
29 the request for qualifications, the subcontractor selection plan proposed by
30 the selected person or firm in submitting its qualifications with those
31 modifications as the agent and the selected person or firm agree.

32 (d) In making the selection of subcontractors, the person or firm
33 selected to perform the construction services shall use the subcontractor
34 selection plan and any procedures included in its contract.

35 8. The agent and the selection committee shall not request or consider
36 fees, price, man-hours or any other cost information at any point in the
37 selection process under this subsection or subsection D of this section,
38 including the selection of the persons or firms to be interviewed, the
39 selection of the persons or firms to be on the final list, in determining the
40 order of preference of persons or firms on the final list or for any other
41 purpose in the selection process. NOTWITHSTANDING THIS SUBSECTION, A CITY,
42 TOWN OR COUNTY MAY REQUEST A TECHNICAL REGISTRANT TO PROVIDE AN ESTIMATE OF
43 FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION. IF THE GOVERNING BODY
44 OF THE CITY, TOWN OR COUNTY REQUESTS THIS INFORMATION, THE INFORMATION
45 PROVIDED IS CONSIDERED PROPRIETARY INFORMATION AND SHALL NOT BE MADE PUBLIC.

1 THE ESTIMATE OF FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION MAY BE
2 ONE OF THE CRITERIA FOR SELECTION BUT MAY NOT ACCOUNT FOR MORE THAN TEN PER
3 CENT OF THE TOTAL CRITERIA.

4 9. For construction-manager-at-risk construction services and
5 design-build construction services, the contract or contracts under a single
6 request for qualifications solicitation or for design-build construction
7 services a single request for qualifications and request for proposals
8 solicitation shall be limited to a specific single project.

9 D. An agent shall award a contract for professional services or for
10 construction services to one of the persons or firms on the final list for
11 that contract prepared pursuant to subsection C of this section as provided
12 in subsection E or F of this section, except that, if fewer than the number
13 of persons or firms on the final list respond to the request for proposals
14 pursuant to subsection F of this section but at least two persons or firms on
15 the final list submit responsive proposals or if one or more of the persons
16 or firms on the final list drop out of the selection process pursuant to
17 subsection E or F of this section:

18 1. If there are three or more remaining persons or firms, the agent
19 shall proceed with the selection process.

20 2. If there are only two remaining persons or firms, as the agent
21 deems necessary and appropriate, the agent may elect to proceed with the
22 selection process with the two persons or firms or may elect to terminate the
23 selection process and may elect to readvertise pursuant to subsection C of
24 this section.

25 3. If there is only one remaining person or firm, the agent may award
26 the contract to a single person or firm if the agent determines in writing
27 that the fee negotiated pursuant to subsection E of this section is fair and
28 reasonable and that either other prospective persons or firms had reasonable
29 opportunity to respond or there is not adequate time for a resolicitation.

30 E. For each contract included in the request for qualifications, the
31 agent shall enter into separate negotiations for the contract with the
32 highest qualified person or firm on the final list for that contract
33 determined pursuant to subsection C of this section for the professional
34 services or for the construction services. However, if the request for
35 qualifications is for multiple contracts and specifies that all of the
36 multiple contracts will be awarded to a single contractor, there may be a
37 single negotiation for all of the multiple contracts. The negotiations shall
38 include consideration of compensation and other contract terms that the agent
39 determines to be fair and reasonable to the agent. In making this decision,
40 the agent shall take into account the estimated value, the scope, the
41 complexity and the nature of the professional services or construction
42 services to be rendered. If the agent is not able to negotiate a
43 satisfactory contract with the highest qualified person or firm on the final
44 list, at compensation and on other contract terms the agent determines to be
45 fair and reasonable, the agent shall formally terminate negotiations with

that person or firm. The agent may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If a contract for construction services is entered into pursuant to this subsection:

1. If the contract is for construction-manager-at-risk construction services and includes preconstruction services by the contractor or if the contract is for design-build construction services, the agent shall enter into a written contract with the contractor for preconstruction services under which contract the agent shall pay the contractor a fee for preconstruction services in an amount agreed by the agent and the contractor, and the agent shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the agent has entered into the written contract for preconstruction services and a preconstruction services fee.

2. Construction shall not commence until the agent and contractor agree in writing on either a fixed price that the agent will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced.

F. As an alternative to subsection E of this section, an agent may award design-build construction services or job-order-contracting construction services as follows:

1. The agent shall use the selection committee appointed for the request for qualifications pursuant to subsection C of this section.

2. The agent shall issue a request for proposals to the persons or firms on the final list developed pursuant to subsection C of this section.

3. For design-build construction services and job-order-contracting construction services, the request for proposals shall include:

(a) The agent's project schedule and project final design and construction budget or life cycle budget for a procurement that includes maintenance services or operations services.

(b) A statement that the contract or contracts will be awarded to the offeror whose proposal receives the highest number of points under a scoring method.

(c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor. The factors in the scoring method shall include:

(i) For design-build construction services only, demonstrated compliance with the design requirements.

(ii) Offeror qualifications.

(iii) Offeror financial capacity.

(iv) Compliance with the agent's project schedule.

(v) For design-build construction services only, if the request for proposals specifies that the agent will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget, compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the agent's budget as prescribed in the request for proposals.

(vi) For design-build construction services if the request for proposals does not contain the specifications prescribed in item (v) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.

(vii) An offeror quality management plan.

(viii) Other evaluation factors as determined by the agent, if any.

(d) For design-build construction services only, the design requirements.

(e) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.

(f) A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(g) If the agent conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the agent determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the agent before those discussions are held.

5. If determined by the agent and included by the agent in the request for proposals, the selection committee shall conduct discussions with all persons or firms that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the owner. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall submit separately the offeror's final technical proposal and its price proposal.

7. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

8. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

9. The agent shall award the contract or contracts to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation.

10. The contract or contracts file shall contain the basis on which the award is made.

11. For design-build construction services only, the agent shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the agent's project final design and construction budget, as prescribed in the request for proposals, but not less than two-tenths of one per cent of the project final design and construction budget to each final list offeror who provides a responsive, but unsuccessful, proposal. If the agent does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the owner's estimate of the project final design and construction budget as included in the request for proposals. The agent shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the agent may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors. Notwithstanding the other provisions of this paragraph, an unsuccessful final list offeror may elect to waive the stipulated fee. If an unsuccessful final list offeror elects to waive the stipulated fee, the agent may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the agent from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

1 G. Until an award and execution of a contract by an agent, only the
2 name of each person or firm on the final list developed pursuant to
3 subsection C of this section may be made available to the public. All other
4 information received by the agent in response to the request for
5 qualifications or contained in the proposals shall be confidential in order
6 to avoid disclosure of the contents that may be prejudicial to competing
7 offerors during the selection process. The proposals shall be open to public
8 inspection after the contract is awarded and the agent has executed the
9 contract. To the extent that the offeror designates and the agent concurs,
10 trade secrets and other proprietary data contained in a proposal remain
11 confidential.

12 H. An agent may cancel a request for qualifications or a request for
13 proposals or reject in whole or in part any or all proposals as specified in
14 the solicitation if it is in the best interest of the agent. The agent shall
15 make the reasons for cancellation or rejection part of the contract file.

16 I. Notwithstanding any other law:

17 1. The contractor for design-build or job-order-contracting
18 construction services is not required to be registered to perform design
19 services pursuant to title 32, chapter 1 if the person or firm actually
20 performing the design services on behalf of the contractor is appropriately
21 registered.

22 2. The contractor for construction-manager-at-risk, design-build or
23 job-order-contracting construction services shall be licensed to perform
24 construction pursuant to title 32, chapter 10.

25 3. For each project for horizontal construction under a design-build
26 or construction-manager-at-risk construction services contract, the licensed
27 contractor performing the contract shall perform, with the contractor's own
28 organization, construction work that amounts to not less than forty-five per
29 cent of the total contract price for construction. For the purposes of this
30 paragraph, the total contract price for construction does not include the
31 cost of preconstruction services, design services or any other related
32 services or the cost to procure any right-of-way or other cost of
33 condemnation.

34 4. There shall be a separate request for qualifications under
35 subsection C of this section for each contract for horizontal construction
36 construction-manager-at-risk construction services or horizontal construction
37 design-build construction services.

38 J. For job-order-contracting construction services only:

39 1. The maximum dollar amount of an individual job order shall be one
40 million dollars or such higher or lower amount prescribed by the agent in an
41 action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted
42 by the agent as the maximum amount of an individual job order. Requirements
43 shall not be artificially divided or fragmented in order to constitute a job
44 order that satisfies this requirement.

2. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job order construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:

(a) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:

(i) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.

(ii) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

(b) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

(i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

K. Notwithstanding anything to the contrary in this chapter, an agent shall not procure any horizontal construction using the construction-manager-at-risk, design-build or job-order-contracting method of project delivery after June 30, 2010. For purposes of this paragraph, an agent procures horizontal construction when the contract for the construction services is executed by the agent and the contractor for the construction-manager-at-risk, design-build or job-order-contracting construction services. If a contract is executed for construction services on or before June 30, 2010, construction services under the contract may be rendered in whole or in part after June 30, 2010.

L. Notwithstanding anything to the contrary in this section or this title, an agent shall not:

1. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

2. Contract with itself, with another agent, with this state or with any other governmental unit of this state or the federal government for the agent to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

1 M. The prohibitions prescribed in subsection L of this section do not
2 prohibit an agent from providing construction for itself as provided by law.

3 N. The agent shall include in each contract for construction services
4 the full street or physical address of each separate location at which the
5 construction will be performed and a requirement that the contractor and each
6 subcontractor at any level include in each of its subcontracts the same
7 address information. The contractor and each subcontractor at any level
8 shall include in each subcontract the full street or physical address of each
9 separate location at which construction work will be performed.

10 O. For the purposes of this section, "professional services" includes
11 architect services, engineer services, landscape architect services, assayer
12 services, geologist services and land surveying services and any combination
13 of those services.